

REMARKS

I. Overview

These remarks are set forth in response to the Final Office Action. Presently, claims 1 through 9 are pending in the Patent Application. Claims 1, 5 and 9 are independent in nature. In the Non-Final Office Action, claims 1, 3 through 5, 7 and 8 have been rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent Application Publication No. 2002/0019755 by Kagami. Further, claims 2, 6 and 9 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Kagami in view of U.S. Patent No. 5,978,770 to Waytena et al. (Waytena). In response, Applicant has amended claims 1, 5 and 9 to emphasize that the scheduled appointment for a client is an already scheduled appointment, but not yet fulfilled appointment thus distinguishing over Kagami in which the previously scheduled appointments have already been fulfilled and merely reflect the historic completion of appointments.

II. The Applicants' Invention

The Applicant has invented a computer-implemented automated interactive method for matching an open appointment to a client. In the Applicant's method, a client list of at least one client having a scheduled appointment can be electronically generated with the caveat that client requires a different appointment than the scheduled appointment. An appointment list of at least one open appointment time slot can be generated and the client list can be correlated to the appointment list in order to generate a contact list. In this regard, the contact list contains at least one appointment option based on the client and the open appointment time slot. Thereafter, the appointment option can be electronically communicated to the client such that the appointment option has a time of availability that is different than the scheduled appointment. Finally, the

appointment option can be selected by the client to fill the at least one open appointment time slot.

III. Rejections Under 35 U.S.C. § 102(b) and 103(a)

A. Characterization of Kagami

Kagami discloses a system and method for scheduling appointments for beauty salons using communication environments such as the internet. The Kagami system also prevents false appointments which are foreseen as being a possible problem when enabling appointments with beauty salons to be made over such a communication environment. In particular, the Kagami system includes a memory device for storing a work schedules of a beauty salon and a data communication device for exchanging data with customers. The Kagami system also includes a central processing device for updating the work schedule based on appointment requests made by the customers such that when a customer makes an appointment request, the appointment request is sent directly to the central processing device if the appointment request includes an identification number pre-assigned to the customer. However, if the appointment request does not include an identification number, the customer is asked to input an address whereby the customer can be contacted by the data communication device, and the appointment request is sent to the central processing device only after the address is inputted. Finally, the appointment information that is prepared on the basis of the appointment request made by the customer is sent to the customer by the data communication device

B. Traversal of the Rejections on the Art

1. The Law of Anticipation

The factual determination of anticipation under 35 U.S.C. § 102 requires the identical disclosure, either explicitly or inherently, of each element of a claimed invention in a single reference.¹ Moreover, the anticipating prior art reference must describe the recited invention with sufficient clarity and detail to establish that the claimed limitations existed in the prior art and that such existence would be recognized by one having ordinary skill in the art.² Absence from an allegedly anticipating prior art reference of any claimed element negates anticipation.³

2. Application of the Law of Anticipation to the Facts

Applicant's amended independent claim 1 provides for a computer-implemented automated interactive method for matching an open appointment to a client. Exemplary claim 1 is reproduced as follows:

1. A computer-implemented automated interactive method for matching an open appointment to a client, comprising:

electronically receiving at least one request for at least one client to change an **already scheduled but not yet fulfilled appointment** for the at least one client;

electronically generating a client list of the at least one client requesting a different appointment from an already scheduled and not yet fulfilled appointment having a scheduled appointment, said at least one client requiring a different appointment than said scheduled appointment;

electronically generating an appointment list of at least one open appointment time slot;

correlating said client list to said appointment list to generate a contact list, said contact list containing at least one appointment option based on said at least one client and said at least one open appointment time slot;

¹ *In re Schreiber*, 128 F.3d 1473, 1477 (Fed. Cir. 1997) ("To anticipate a claim, a prior art reference must disclose every limitation of the claimed invention, either explicitly or inherently"). *In re Rijckaert*, 9 F.3d 1531, 28 USPQ2d 1955 (Fed. Cir. 1993); *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989); *Perkin-Elmer Corp. v. Computervision Corp.*, 732 F.2d 888, 894, 221 USPQ 669, 673 (Fed. Cir. 1984).

² See *In re Spada*, 911 F.2d 705, 708, 15 USPQ 1655, 1657 (Fed. Cir. 1990); *Diversitech Corp. v. Century Steps Inc.*, 850 F.2d 675, 678, 7 USPQ2d 1315, 1317 (Fed. Cir. 1988).

³ *Kloster Speedsteel AB v. Crucible, Inc.*, 793 F.2d 1565, 1571 (Fed. Cir. 1986)(emphasis added).

electronically communicating said at least one appointment option to said at least one client, said at least one appointment option having a time of availability different than said already scheduled appointment and not yet fulfilled appointment; and

electronically selecting said at least one appointment option by said at least one client to fill said at least one open appointment time slot..

Integral to claim 1 is the receipt of a request to change an already scheduled, but not yet fulfilled appointment for a client. This feature cannot be located in Kagami.

On page 2 of the Final Office Action, Examiner refers to paragraph [0032] of Kagami for the teaching of the scheduling of appointments based upon already scheduled appointments.

Specifically, Examiner stated:

Applicant argues that the Kagami reference fails to teach, "a client requiring an appointment that differs from an already scheduled appointment for the client (see page 10 of Applicant's remarks)." The Examiner respectfully disagrees with this assertion because ¶ [0032] of the cited reference explicitly discloses a customer entering an identification number after which the system searches its records for stylists who that customer has patronized before based on the identification number. The system therefore keeps records of previous appointments that the customer has scheduled, with specific stylists, and uses this information to present the customer with a list of available appointment times, with one of said stylists, that differ from the previously scheduled appointments in the system's records. The client requesting the appointment in the above example therefore does in fact require an appointment that differs from an already scheduled appointment.

Thus, Examiner equates an already scheduled appointment as an appointment that indeed had been scheduled previously, yet had already been fulfilled. The intent of Applicant's claims, however, is to claim the rescheduling of an already scheduled but not yet fulfilled appointment as will be apparent from paragraph [0013] of Applicant's published specification. Accordingly, in keeping with the spirit and teachings of paragraph [0013], Applicant has amended claims 1, 5 and 9 to expressly specify that the scheduled appointment is an "already" scheduled appointment, but not yet "fulfilled" appointment.

3. Conclusion

In that important limitations of all of the claims as amended are lacking in the combination of Kagami and Waytena, the Applicant respectfully requests the withdrawal of the rejections under 35 U.S.C. §§ 102(b) and 103(a) owing to the clearly distinctive nature of Applicant's invention as recited in amended claims 1, 5 and 9. The Applicant requests that the Examiner call the undersigned if clarification is needed on any matter within this Amendment, or if the Examiner believes a telephone interview would expedite the prosecution of the subject application to completion.

Respectfully submitted,

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/Steven M. Greenberg/

Steven M. Greenberg, Reg. No.: 44,725
Attorney for Applicant(s)
Carey, Rodriguez, Greenberg & Paul, LLP
950 Peninsula Corporate Circle, Suite 3020
Boca Raton, Florida 33487
Customer No. 29973
Tel: (561) 922-3845
Fax: (561) 244-1062